

GERALD N. JACOBOWITZ
DAVID B. GUBITS
JOHN H. THOMAS JR.
GERALD A. LENNON
PETER R. ERIKSEN
HOWARD PROTTER
DONALD G. NICHOL
LARRY WOLJNSKY
ROBERT E. DINARDO
J. BENJAMIN GAILEY
MARK A. KROHN*
JOHN C. CAPPELLO
GEORGE W. LITHCO
MICHAEL L. CAREY
*LLM IN TAXATION

JACOBOWITZ AND GUBITS, LLP

COUNSELORS AT LAW

158 ORANGE AVENUE
POST OFFICE BOX 367
WALDEN, NEW YORK 12586-0367

(845) 778-2121 (845) 778-5173 FAX
E-mail: info@jacobowitz.com

KIRK VAN TASSELL
SANFORD R. ALTMAN
MARK T. STARKMAN
AMANDA B. BRADY
MICHELE L. BABCOCK
GARY M. SCHUSTER
WILLIAM E. DUQUETTE
JOSEPH J. RANNI
CARMEE G. MURPHY
ALYSE D. TERHUNE
KARA J. CAVALLLO
ERIC P. CHAPMAN
JOHN J. REVELLA

PAULA ELAINE KAY*

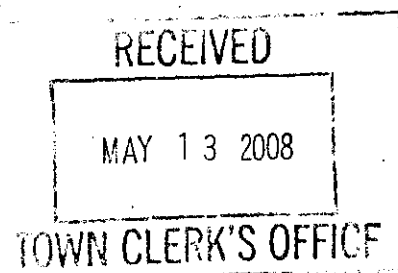
*Of Counsel

May 12, 2008

Via Facsimile (845) 563-4689 & (845) 563-4670

Hon. Chairman and Zoning Board Members
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: Application of Edward Biagini
24 Little Brook Court



Dear Chairman Kane and Board Members:

We have reviewed the above referenced area variance application on behalf of Patricia and Patrick Amendolagine, who own and maintain their residence at 28 Little Brook Road, which is located to the east of the proposed 3-lot subdivision immediately adjacent to proposed Lot No.1.

The applicant has submitted an application seeking to develop 3-lots from property that could only yield 1 lot pursuant to the existing R-1 Rural Residential zoning. The R-1 Rural Residential zoning district requires a minimum gross lot area of 80,000 sq. ft. per lot, therefore a total of 240,000 sq. ft. for the proposed three lots. The total gross area of the existing lot seeking to be subdivided into 3 lots is 116,786 sq. ft. The applicant therefore has less than one half the lot area required to develop 3 lots in this zoning district. Similarly, not one of the 3 lots comes close to meeting the minimum net lot area required to develop a lot in the R-1 zoning district.

Furthermore, Lot No. 1, which is immediately adjacent to the Amendolagine's home, requires substantial variances from the minimum lot width and side yard requirement and a variance from the frontyard setback.

It is difficult to appropriately analyze the support for the requested variances because the support consists of a total of three sentences to justify granting such substantial variances. Incredibly, the applicant concluded that the subdivision would create no adverse impact on the public, health, safety and welfare without offering any support for that conclusory statement. In fact, support must be taken into account that all 3 lots are proposed to be supported by individual wells and septic fields. As I am sure this Board recalls, one of the overriding purposes for the Town to recently re-examine its zoning code and create increased minimum gross and net lot areas in residential districts such as this, was to address the potential adverse impacts on groundwater from the prevalence of the individual wells and septic on smaller lots. The most generally accepted engineering standpoint is that it takes a minimum of one and a half acres of land to develop an individual well and septic field that will continue to

Hon. Chairman and Zoning Board Members
Our File No. 777-918062

May 12, 2008
Page -2-

function for extended periods of time. Additionally, the Town's proposed Comprehensive Plan lists as one of its goals to protect groundwater in areas without central water and sewer service. For this reason alone, a potential adverse impact on the groundwater would support your Board's denial of the requested variances.

Furthermore, the sheer magnitude of the variances requested, which would triple the density permitted on this lot, within of itself justify denial of the area variances. The New York State Court of Appeals has held that "the larger the magnitude of the variances requested, the more likely it is that a proposal may have a deleterious impact on the neighborhood and be destructive to community zoning scheme. See *National Merritt v. Weist*, 41 NY2d 438 (1977).

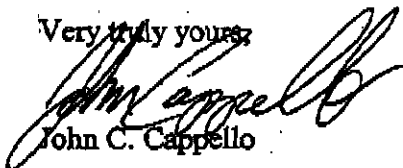
Additionally, the difficulty is self created since the developer purchased the property knowing the zoning and laid a foundation for a home on proposed Lot No. 1, which was located only 20 feet from the side lot line in violation of Town zoning. The laying of the foundation is subject to an Order to Remedy the zoning violation issued by the Town of New Windsor Building Department.

The application contains virtually no information examining or analyzing the detriment to the health, safety and welfare of the neighborhood or community by the grant of such large zoning variances. Furthermore, the only benefit cited by the applicant is that the variances would allow them to develop 3-single family homes on a lot that would only yield one pursuant to the Town's zoning ordinance and would allow them to address the Order to Remedy the zoning violations which they created.

Finally, there are significant drainage problems existing in the neighborhood, based on the Amendolagines' living in the area for over 20 years, which would only be exacerbated by creating 3 lots out of a property that would only appropriately yield 1 lot.

For all the reasons stated above, this requested variance must be denied. Thank you for your consideration of these comments.

Very truly yours,



John C. Cappello

IV. NATURAL RESOURCES

A. Goals

Goal: Protect sensitive environmental areas and incorporate into an open space/natural resource system.

Goal: Protect groundwater resources so that residents of the western portion of the Town and areas without central water who will continue to utilize individual private wells into the foreseeable future and are assured high quality water.

Goal: Mandate the protection and enhancement of surface waters, including public water supplies, within the Town to promote environmental stewardship as well as public recreational opportunities.

B. Summary of Existing Conditions

There are environmentally sensitive features and areas present throughout the Town that will need to be taken into consideration in developing the Plan (refer to Figure 6).

1. Water resources

A major objective of the Comprehensive Plan is to accommodate future growth in a manner that respects the Town's environmental resources. New Windsor has the great fortune to be located both in the Hudson River Valley which was recently named a National Heritage Area and also located directly on the west bank of the scenic Hudson River. The River is not only an important natural resource but the location of a number of historic events dating back to the Revolutionary War. The river corridors have also hosted much of the Town's major industrial development within the 19th and 20th Centuries.

Lake Washington, Silver Stream Reservoir, and Beaverdam Lake are the Town's major waterbodies and are major sources of water supply. There are also a number of smaller lakes and ponds throughout the Town. The Moodna and Quassaic Creeks are scenic tributaries of the Hudson River which run through Orange County. The Moodna Creek enters the Town in the southeast corner for a short distance as it meets the Hudson River. The Quassaic enters the Town in the northeast corner from the City of Newburgh as it meets the Hudson River.

Sand and Gravel aquifers are located throughout the central and eastern portions of the Town (refer to Figure 6). They are not presently utilized as a primary source for public and private water systems in the Town; however, their protection as important natural resources is of paramount importance. The Town's aquifers are recharged primarily from infiltration of precipitation.